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ABSTRACT

This paper is part of a collection of 54 papers from the 48th annual conference of the Education Law Association held in November 2002. It addresses education finance litigation generated by "Serrano v. Priest." (Considered a landmark decision of the Supreme Court of California, "Serrano" resulted in victory for funding-equity plaintiffs and established a model for similar litigation in other states.) This paper is a report of a study based on a review of relevant published opinions and scholarly commentary since "Serrano." It discusses the efficacy of funding litigation, the continuing evolution of funding litigation, shifting balances of state and local control, and the potential future of funding litigation. The paper concludes that litigation spawned by "Serrano" continues to thrive and evolve throughout all 50 states and shows no indications of subsiding. Plaintiffs appear to be placing a greater emphasis on tangible evidence of disparities in educational resources and less emphasis on per-pupil expenditures. Judges appear to be focusing more on defining the parameters of a minimally adequate public education under their state's constitution than on mere per-pupil funding disparities. (Contains 41 endnotes, some of which include references.) (WFA)

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# Education Finance Litigation: An Examination of Emerging Trends and Future Directions.

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November 2002

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# EDUCATION FINANCE LITIGATION: AN EXAMINATION OF EMERGING TRENDS AND FUTURE DIRECTIONS

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Education finance litigation sparked by *Serrano* continues unabated throughout the United States. Over three decades have passed since the Supreme Court of California's landmark decision in *Serrano v. Priest*[1] resulted in victory for funding equity plaintiffs, and established a model for similar litigation in other states.[2] Since *Serrano*, one of the more significant developments in the evolution of funding litigation has been the emerging focus on constitutional adequacy in the provision of public education.[3] This study is based on a review of relevant published opinions and scholarly commentary since *Serrano*, and discusses the efficacy of funding litigation, the continuing evolution of funding litigation, shifting balances of state and local control, and the potential future of funding litigation.

## THE EFFICACY OF FUNDING LITIGATION

A review of three decades of funding litigation inevitably raises the question: Has this litigation been effective? In answering this question, assessments of the efficacy of funding litigation largely depend on expectations. Those that expected funding litigation to be the panacea for all public school equity problems were inevitably disappointed. But by any measure, funding litigation since *Serrano* has been extensive and enduring, affecting every state to some degree in the three decades since *Serrano*. The persistence and pervasiveness of this litigation suggests that plaintiffs must believe they have been achieving some of their goals. Funding litigation efforts do appear to have been successful in getting funding equity concerns into the public forum and on the legislative agenda. Nonetheless, after many years of litigation and judicial intervention, substantial funding inequities continue. Judicial declarations that funding systems were unconstitutional have prompted legislative reform efforts in many states. But even where reforms have been enacted there has often been a tendency towards deterioration of equity gains.[4] Through the disproportionate influence often available to those with economic and political power, politically powerful districts may continue to dominate the legislative process, sometimes altering equity

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reform legislation to the degree that inequities may actually increase after initial reform efforts.[5] A review of the case law and scholarly commentary since *Serrano* indicates that while the efficacy of funding litigation varied dramatically among states, no where did plaintiffs fully achieve their equity goals. But in all states, funding equity issues were likely afforded greater consideration because of litigation concerns,[6] leading some scholars to conclude that a credible threat of litigation may be more effective in achieving reform than actual litigation.[7] Whether funding litigation is an effective means of promoting funding reform remains an issue of intense debate among litigants and scholars.

## THE CONTINUING EVOLUTION OF FUNDING LITIGATION

Despite the debate concerning the efficacy of funding litigation, this litigation continues unabated, and continues to evolve. For example, earlier *Serrano*-type cases largely focused on disparities in per-pupil expenditures. But in contrast to earlier *Serrano*-type cases, many more recent judicial opinions have focused on the provision of an adequate education.[8] The goal appears to be assuring access to the educational resources necessary to provide an adequate education for every child regardless of per-pupil expenditures, while permitting local discretion to exceed the minimums of educational adequacy.

But adequacy cases lack the clear judicially manageable standard of fiscal equity in *Serrano,* leading judges into the murky waters of defining an "adequate" education. In the broad spectrum between extreme judicial activism and extreme judicial deference, there are at least three possible judicial approaches to ordering legislative reform to achieve adequacy: substantive standards, procedural standards, and broad judicial deference to the legislature.

Some courts have issued judicial opinions expressly outlining substantive minimally standards for an adequate education under their state's constitution.[9] For example, in *Rose v. Council for Better Education*, the Supreme Court of Kentucky declared that the Kentucky Constitution required as a minimum that each student's educational program must provide:

> 1) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
> 2) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
> 3) sufficient understanding of governmental processes to enable the student to understand the issues that affect his of her community, state, and nation;
> 4) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
> 5) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
> 6) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
> 7) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.[10]

By explicitly outlining minimal constitutional requirements for an adequate education, courts are establishing substantive standards that could help to guide legislators in enacting reforms to assure that every student receives the educational resources required by the state constitution, but still allow for local supplements that exceed minimal constitutional adequacy. However, judicial opinions establishing educational standards raise serious questions concerning judicial competence, authority, and separation of powers.

Other courts have declined to issue explicit substantive standards, but instead appeared to require a procedural process in which the general assembly must: 1) consider what constitutes an adequate education under their constitution; and 2) design a funding system to assure that resources are available to fund this adequate education for all children. For example, in *Cambell County v. State* the Supreme Court of Wyoming declared the state funding system unconstitutional, and ordered a remedy stating that "the legislature must first design the best educational system by identifying the 'proper' educational package each Wyoming student is entitled to have" and second the "cost of that educational package must then be determined and the legislature must then take the necessary action to fund that package."[11]

Courts concerned about judicial competence, authority, and separation of powers issues could also merely declare funding systems unconstitutional, broadly defer to legislative authority in defining a constitutionally adequate education, and provide no explicit guidance concerning what legislators must do to produce a funding system that would survive future judicial scrutiny. However, it can be argued that this judicial ambiguity in mandating reform, and the resulting legislative trial-and-error process, could contribute to protracted litigation as the general assembly must "guess" at what the court considers a constitutionally adequate response to the court's decision.

Heated debate continues concerning the proper limits of judicial authority in setting standards for an adequate education, and judges' views about judicial competence, authority, and separation of powers are good indicators of whether they would support or oppose an activist role for the court in future funding litigation. The doctrine of separation of powers clearly prohibits judges from exercising legislative or administration powers. Further, most judges have no special expertise in education, and were not elected by the people to make educational policy. Debate continues concerning whether judicial declarations expressly outlining an adequate education exceed judicial authority, or whether failure to clearly set clear judicial standards in ordering a remedy constitutes judicial negligence.

## SHIFTING BALANCES OF STATE AND LOCAL CONTROL

Even casual observers of educational policy have likely observed that state level control is increasingly dominating public education. From increased state accountability efforts and curriculum mandates to new finance programs, states are asserting growing authority over local schools.[12] However, it is interesting to

note that in *San Antonio v. Rodriguez,*[13] and in many subsequent state court opinions upholding challenged funding systems, funding disparities were justified based on the state's asserted goal of promoting local control. As state level funding and control increase, at the expense of local control, it becomes increasingly difficult to justify continued funding inequities based on preserving local control.

In addition, increases in federal mandates and funding may further erode local control. The *No Child Left Behind Act of 2001* brings both new federal mandates and money to local schools. While local school officials will certainly welcome more state and federal dollars, funding and control are indissolubly linked. If "local control" was a legitimate justification for perpetuating funding inequities, with every additional state and federal dollar and mandate, the local control justification is further weakened.

## THE FUTURE OF FUNDING LITIGATION

Any discussion about the future is necessarily speculative, but a review of recent funding litigation, political activity, and scholarly commentary reveals some developing trends concerning the potential future of funding litigation. This section briefly reviews selected issues likely to influence the future of funding litigation, including, equity, adequacy, accountability, economic status, politics, and the special problems of rural and urban schools.

### *From Equity, to Adequacy, to Accountability?*

Law and finance scholars have documented the judicial trend from equity to adequacy in funding litigation, but a recent decision by the Supreme Court of New Hampshire in *Claremont v. Governor (Claremont III)*[14] appears to take a new approach by focusing directly on accountability as a constitutional requirement of an adequate education. In *Claremont I*, the Supreme Court of New Hampshire held that the state constitution "imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding."[15] In *Claremont II* the court held that a state funded constitutionally adequate education was a fundamental right, any property tax levied to fund education is a state tax and the taxing district is the entire state, and disproportionate local school taxes were an unreasonable and unconstitutional means of funding schools.[16] In *Claremont v. Governor III*, the Supreme Court of New Hampshire was asked to determine whether: 1) the State's obligation to provide a constitutionally adequate education required the State to provide standards of accountability; and 2) to what extent statutory exemptions for financial hardship excused compliance with minimum educational standards established by the State.[17] In a 3-2 decision the court held that "accountability is an essential component of the State's duty and that the existing statutory scheme has deficiencies that are inconsistent with the State's duty to provide a constitutionally adequate education."[18]

In *Claremont III* the State characterized the court's prior holdings as requiring the State to: 1) define an

adequate education; 2) calculate the costs; 3) provide funding with constitutional taxes; and 4) ensure the delivery of an adequate education through adequate accountability measures.[19] The court noted that the Senate had passed a bill described as "an Act establishing a comprehensive statewide accountability system concerning an adequate education."[20] The court further noted that: "In this legislation, specific test scores were established as performance goals that students had to meet. The State, however, was not required to assist schools or school districts where students did not meet these goals."[21] The Senate Bill was vetoed by the Governor, because the legislation contained no provisions to require accountability, with the Governor quoting President George W. Bush's statement that "without consequences for failure, there is no pressure to succeed."[22]

Concerning accountability, the court stated that:

> Accountability is more than merely creating a system to deliver an adequate education. *Claremont I* did not simply hold that the State should deliver a constitutionally adequate education, but in fact held that it is the State's duty under the New Hampshire Constitution to do so . . . Accountability means that the State must provide a definition of a constitutionally adequate education, the definition must have standards, and the standards must be subject to meaningful application so that it is possible to determine whether, in delegating its obligation to provide a constitutionally adequate education, the State has fulfilled its duty . . . This view is shared by other jurisdictions. In Massachusetts, for example, in response to *McDuffy* . . . the legislature promulgated a system of accountability whereby the state board of education was given authority to establish specific performance standards and a program of remediation when students' test scores fall below a certain level . . . In Ohio [*DeRolph*] the state supreme court stated that "accountability is an important component of the educational system" . . . In Tennessee [*McWhether*] the state supreme court said that "the essentials of the governance provisions of the [Basic Education Program] are mandatory performance standards; local management within established principles; performance audits that objectively measure results; . . . and final responsibility upon the State officials for an effective educational system throughout the State" . . . It is thus widely accepted that establishing standards of accountability is part of the State's duty to provide a constitutionally adequate education.[23]

The court stated that: "The system the State currently has in place appears to use both standards based on what school districts provide (input-based standards) and results that school districts achieve (output-based standards)."[24] But the court noted that: "The plaintiffs argue that despite these programs, 'the State has failed to meet its obligation to promulgate standards because the standards in place are voluntary, unconstitutional, and do not set any specific levels of performance that schools or school districts must meet.'"[25] The State responded that it "dictates certain school approval standards that schools and school districts must meet" and that the education individual schools provide is measured against these standards for approval.[26]

But the court noted that the applicable statute provides that: "The state board of education shall have the power to approve for a reasonable period of time a high school that does not fully meet the

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requirements . . . if in its judgment the financial condition of the school district or other circumstances warrant delay in full compliance."[27] The court further noted that the administrative regulations define a financial or emergency condition that could justify excusal from compliance to include: "1) Reduction in local tax base; 2) Closing of a major industry; 3) Sudden influx of school-age population; 4) Emergency beyond the control of the school district, such as fire or natural disaster; or 5) Other financial or emergency condition not listed above." The court stated that:

> On their face [the statute and regulation] permit a school district to provide less than an adequate education as measured by these minimum standards when the local tax base cannot supply sufficient funds to meet the standards. The statue and the rule also permit noncompliance with the standards under emergency conditions, such as a fire or natural disaster. While it may be permissible to excuse noncompliance under emergency conditions, the statute permits the board of education to also approve a school that does not meet the minimum standards based solely on the "financial condition of the school district" . . . Excused noncompliance with the minimum standards for financial reasons alone directly conflicts with the constitutional command that the State must guarantee sufficient funding to ensure that school districts can provide a constitutionally adequate education. As we have repeatedly held, it is the State's duty to guarantee the funding necessary to provide a constitutionally adequate education to every educable child in the public schools in the State . . . The responsibility for ensuring the provision of an adequate public education and an adequate level of resources for all students in New Hampshire lies with the State. While local governments may be required, in part, to support public schools, it is the responsibility of the State to take such steps as may be required in each instance effectively to devise a plan and sources of funds sufficient to meet the constitutional mandate . . . There is no accountability when the rules on their face tolerate noncompliance with the duty to provide a constitutionally adequate education. While the State may delegate this duty . . . it must do so in a manner that does not abdicate the constitutional duty it owes to the people . . . The State's duty cannot be relieved by the constraints of a school district's tax base or other financial condition . . . the State may not take the position that the minimum standards form an essential component of the delivery of a constitutionally adequate education and yet allow for the financial constraints of a school or school district to excuse compliance with those very standards. We hold, therefore, that to the extent the minimum standards for school approval excuse compliance solely based on financial conditions, it is facially insufficient because it is in clear conflict with the State's duty to provide a constitutionally adequate education.[28]

Although the applicable statute provides for state-wide assessments, the court noted that under the statute "no school district is required to respond to the assessment results; rather 'each school district in New Hampshire is *encouraged* to develop a local education improvement and assessment plan' . . . neither the school district nor the department of education is required to do anything . . . The department of education is available to assist. Nothing more is required."[29] The court stated that:

"The purpose of meaningful accountability is to ensure that those entrusted with the duty of delivering a constitutionally adequate education are fulfilling that duty . . . The State has not provided a sufficient mechanism to require that school districts actually achieve this goal."[30] The court concluded that: "We hold that because of deficiencies in the system as set out in this opinion, the State has not met its

constitutional obligation to develop a system to ensure the delivery of a constitutionally adequate education."[31]

Based on the court's decision in *Claremont III*, it is possible that state accountability measures could receive greater scrutiny in future opinions concerning whether the state is meeting constitutional obligations to provide an adequate education.

*The Effects of Budget Deficits on Funding Reform Efforts*

Several courts have held that state fiscal difficulties do not excuse failure to comply with constitutional mandates to support education. In declaring the entire public education system of Kentucky unconstitutional and requiring a complete revision, the Supreme Court of Kentucky stated: "The taxpayers of this state must pay for the system, no matter how large, even to the point of being unexpectedly large or even onerous."[32] The Supreme Court of Texas held that "the legislature must establish priorities according to constitutional mandates; equalizing educational opportunity cannot be relegated to an 'if funds are left over' basis."[33] The Supreme Court of Montana concurred, stating that "fiscal difficulties in no way justify perpetuating inequities."[34] While no court has stated they would allow state fiscal difficulties to effect their decision, La Morte and Williams suggested that:

> [E]conomic recessions, can act to thwart plaintiffs' hopes since the unavailability of revenue makes change more difficult and bolsters defendants' contention that workable solutions do not exist. When the fiscal condition of state governments is relatively healthy, equity may well enjoy popularity: state revenue is available for a "leveling up" process, which is clearly a more palatable task for both courts and legislatures than requiring a "leveling down." Speculation is difficult, however, as to whether economic conditions would lead to different judicial treatment of the issues presented.[35]

It may be impossible to definitively establish that economic conditions affect judicial decisions on funding cases, although common sense and anecdotal evidence may support this theory, as it is certain that the availability of funds will affect the legislative response to judicial reform mandates.[36] And if the prospects for an acceptable legislative response are remote, judges may be hesitant to order reform when the environment for remedial efforts appears inhospitable, fearing judicial entanglement in protracted and unproductive serial litigation or legislative defiance that may call into question the power and authority of the court. Obviously, it would be difficult or impossible to fund extremely expensive school funding reform in a time of dramatic budget deficits and budget cuts. Although judges have a duty to be guided by the law and not current economic or political conditions, most state judges are also elected officials, and likely very aware of current economic and political realities in their state.

*Urban School Funding Litigation*

Urban schools continue to face considerable challenges, some of which were the subjects of prior desegregation efforts. But as urban school districts are increasingly declared unitary, formal judicial

desegregation efforts are ending (Dayton, 1993). However, it should be remembered that *Serrano v. Priest* (1971) was the ideological descendent of *Brown v. Board of Education* (1954), and with the termination of *Brown*-era reform efforts, some urban school advocates are attempting to resurrect *Brown*-type reform efforts by employing *Serrano*-type litigation. They are asserting that state funding schemes disparately impact members of racial minorities, particularly in urban areas. To date, this line of litigation has achieved very limited success in the courtroom. Recently, in *Campaign for Fiscal Equity v. State*, the New York Supreme Court, Appellate Division, reversed a trial court decision in favor of plaintiffs, holding that plaintiff students were already receiving an opportunity for a sound basic education as required by the New York Constitution, and that the law and facts did not support a Title VI claim of discrimination.[37]

Some of the legal theories employed to support funding reform for urban schools have included claims based on desegregation orders, the equal protection clauses of both the federal and state constitutions, state education articles, state anti-discrimination laws, and Title VI of the Civil Rights Act of 1964. As noted above, formal desegregation orders are ending. Further, because many urban schools already receive higher funding levels than other schools in the state, equal protection claims are problematic. As the Supreme Court of North Carolina noted in *Leandro v. State*, when urban schools intervened in a funding equity case: "Ironically, if plaintiff-intervenors' [large relatively wealthy urban districts] argument should prevail, they would be entitled to an unequally large per-pupil allocation of state school funds for their relatively wealthy urban districts."38 Claims based on discrimination have been limited based on lack of evidence of intent to discriminate, and judicial decisions holding that disparate impact alone does not constitute actionable discrimination.[39] Urban school litigation was further limited by the U.S. Supreme Court's decision in *Alexander v. Sandoval*, holding that there is no private right of action under the implementing regulations of Title VI.[40] These developments have cast doubt on the continued viability of race-based funding equity litigation for urban schools. However, advocates for these schools have demonstrated considerable creativity in litigation. Further, even if these arguments are unsuccessful in the courts, these arguments could still carry considerable weight in the political arena.

*Rural School Funding Litigation*

There appears to be evidence of continued and even growing disparities in resources for some rural and metropolitan area schools, and an escalating battle over financial resources between rural and metropolitan districts. If the fiscal situation of rural schools in some states continues to deteriorate, and if state lawmakers fail to provide adequate remedies, litigation may be the only remaining option for disadvantaged rural schools. Among the issues aggravating disparities among rural and metropolitan area schools are some states increased reliance on sales taxes to supplement funds for public education. Clearly, legislators and local officials face a formidable task in adequately funding public schools. And in

their search for new sources of revenue, some state officials are increasingly turning to local sales taxes to supplement local schools. But funding systems using local sales taxes pose a growing threat to equitable funding for rural schools as centers of commerce increasingly move from smaller communities to larger metropolitan areas. As the Supreme Court of Tennessee recognized in *Tennessee Small School Systems v. McWherter,* the use of local sales taxes to fund local schools significantly disadvantages rural school districts.[41] The Supreme Court of Alabama also noted in *Opinion of the Justices* that "rural students are disadvantaged because they generally live in areas without large shopping centers and are thus unable to generate substantial sales tax revenues for support of their schools."[42]

Nonetheless, because of the difficulty of acquiring additional funds for public schools in a political environment already aggravated by high taxes, funding schemes utilizing local sales taxes continue to attract supporters. Many property owners have been persuaded that local sales taxes provide a means of limiting property taxes by imposing part of the burden of funding local schools on out-of-district shoppers and persons who do not own property. But rural community advocates argue that this use of sales taxes not only increases funding disparities between metropolitan and rural schools, but also imposes a regressive tax on poorer individuals. Further, it drains additional funds from poorer rural communities into metropolitan areas as rural residents must increasingly travel to metropolitan areas to shop for goods and services not available locally. Increased litigation by rural funding advocates is possible based on funding disparities related to increased reliance on local sales taxes, inadequate facilities, and inadequate funding for other educational resources in rural schools.

*The Politics of Funding Litigation*

Because the status quo is in most states a reflection of political realities, significant changes in funding in some states may be slow, difficult, or impossible under current circumstances. In many states funding inequities persist largely because the political interests that created fiscal realities also persist. For good or bad, the status quo is a reflection of current political realities in many states. Significant and lasting changes in funding reform may only occur when accompanied by significant and lasting changes in political realities.

Nearly three decades after *Serrano,* equity reformers remain active. Further, equity reformers have been successful in about 50% of the cases. However, these post-*Serrano* judicial mandates for funding reform have created a political dilemma for legislators. Presumably, because funding legislation is a product of the political process, funding systems are largely consistent with current political realities, making meaningful reform politically difficult. But if legislators do nothing, they face compliance litigation from plaintiffs and possible contempt sanctions from the courts. And if legislators alter the political status quo and redistribute funding, they may likely face political backlash and possible counter-litigation from

those advantaged by the prior system of funding. Further, anytime the funding formula is changed, the door is opened for both former plaintiffs and other aggrieved parties to relitigate based on changed circumstances.

After 30 years of post-*Serrano* litigation, funding inequities persist, causing many to question the efficacy of this litigation. The continued flurry of litigation since *Serrano* may seem to some excessive or even futile. However, others would argue that this protracted debate over funding equity, including litigation, is a necessary element in the continuing efforts to achieve a just and workable balance among competing interests in the contentious arena of public school finance.

## CONCLUSION

An examination of current and potential litigation in the 50 states indicates that the litigation spawned by *Serrano* continues to thrive and evolve. Plaintiffs appear to be placing a greater emphasis on tangible evidence of disparities in educational resources, and less emphasis on per-pupil expenditures. And judges appear to be focusing more on defining the parameters of a minimally adequate public education under their state's constitution than on mere per-pupil funding disparities. Tension also appears to be building among rural schools, hindered by relatively low property values, higher costs of rural education, and an inability to benefit from the local sales taxes available to many metropolitan area schools. Further, as desegregation orders lapse nation-wide, some urban schools may employ funding litigation to help remedy continuing urban school inequities and inadequacies. A review of recent and pending funding litigation and reform efforts indicates that the spirit of *Serrano* is alive and well throughout the 50 states, and shows no indications of subsiding.

1. 487 P.2d 1241 (Cal. 1971). *See also* Note, *The Serrano Documents*, 2 YALE REV. L. & SOC. ACTION 77 (1971).

2. Most scholars recognize *Serrano* as the beginning of the modern era in funding litigation. *See* MICHAEL W. LA MORTE, SCHOOL LAW 358 (4th. ed. 1993) ("*Serrano* . . . provided the court with a judicially manageable standard, which had been missing in *McInnis* and *Burruss*") McInnis v. Shapiro, 293 F. Supp. 327 (1968), *affirmed sub nom. McInnis v. Ogilvie*, 394 U.S. 322 (1969); Burruss v. Wilkerson, 310 F. Supp. 572 (1969), *Affirmed* 397 U.S. 44 (1970); *see also* William E. Sparkman, *School Finance Challenges in State Courts, in* THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE 193, 197 (Julie K. Underwood ed., 1990) ("the claims made by the plaintiffs in the California school finance case *Serrano v. Priest* are representative of similar claims made in over 30 other states since the late 1960s").

3. *See* Paul A. Minorini & Stephen D. Sugarman, *Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm, in* EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES (Helen F. Ladd, Rosemary Chalk, & Janet S. Hansen eds. 1999).

4. William E. Camp & David C. Thompson, *School Finance Litigation: Legal Issues and Politics of Reform*, 14 J. EDUC. FIN. 221, 223-224 (1988).

5. T. Bevelock, *Public school financing reform: Renewed interest in the courthouse, but will the statehouse follow suit?*, 65 ST. JOHN'S LAW REVIEW 467, 489 (1991).

6. David C. Thompson, R. Craig Wood, & David S. Honeyman, FISCAL LEADERSHIP FOR SCHOOLS 290 (1994) (''if it were not for litigation, it is absolutely certain that less progress toward fundamental fairness in school finance would exist today'').

7. John Dayton. *Examining the Efficacy of Judicial Involvement in Public School Funding Reform*, 22 J. EDUC. FIN. 1 (1996).

8. *See*, James W. Guthrie & Richard Rothstein, *Enabling "Adequacy" to Achieve Reality: Translating Adequacy into State School Finance Distribution Arrangements, in* EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES (Helen F. Ladd, Rosemary Chalk, & Janet S. Hansen eds. 1999).

9. *See* Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979) (In defining a thorough and efficient education, the court included in its "legally recognized elements of this definition" the development of every child's capacity related to: 1) literacy; 2) mathematics; 3) government; 4) environmental and self-knowledge; 5) academic and work-training; 6) recreation; 7) creative arts; and 8) socialization skills).

10. 790 S.W.2d 186, 212 (Ky. 1989).

10. 907 P.2d 1238, 1279 (Wyo. 1995).

12. Neil Theobald. *State Activism in School Funding*, 66 SCHOOL BUSINESS AFFAIRS 44 (2000).

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13. 411 U.S. 1 (1973).

14. 794 A.2d 744 (N.H. 2002).

15. 635 A.2d 1375, 1376 (N.H. 1993).

16. 703 A.2d 1353 (N.H. 1997).

17. 794 A.2d 744 (N.H. 2002).

18. *Id.* at 745.

19. 794 A.2d 744, 749 (N.H. 2002).

20. *Id.*

21. *Id.*

22. *Id.* at 750.

23. *Id.* at 751-752.

24. *Id.* at 753.

25. *Id.*

26. *Id.*

27. *Id.* at 754.

28. *Id.* at 744-755.

29. *Id.* at 757-758.

30. *Id.* at 758.

31. *Id.*

32. Rose v. Council for Better Education., 790 S.W.2d 186, 208 (Ky. 1989).

33. Edgewood v. Kirby, 777 S.W.2d 391, 397-398 (Tex. 1989).

34. Helena v. State, 769 P.2d 684, 690 (Mont. 1989).

35. Michael W. La Morte & Jeffrey D. Williams, *Court Decisions and School Finance Reform*, 21 EDUC. ADMIN. Q. 59, 81 (1985).

36. Many states' constitutions require the legislature to operate under a balanced budget. Law makers cannot spend funds the state is not legally authorized to spend, even for the most noble of purposes.

36. 744 N.Y.S.2d 130 (N.Y. App. Div. 2002).

38. 488 S.E.2d 249, 257 (N.C. 1997).

38. Campaign for Fiscal Equity v. State, 744 N.Y.S.2d 130 (N.Y. App. Div. 2002).

39. 532 U.S. 275 (2001).

40. 851 S.W.2d 139, 144 (Tenn. 1993).

41. 624 So.2d 107,124 (Ala. 1993).

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